

Appl. No. 09/405,189

Amendment and Response dated August 26, 2003

Reply to Office Action of March 26, 2003

**REMARKS**

Applicants have received and reviewed an Office Action dated March 26, 2003. By way of response, Applicants have canceled claims 10, 13, 14, 22 and 34 without prejudice and amended claims 1-9, 11, 12, 15, 16, 18, 20, 23, 24, 31-33, and 47. No new matter is presented. Claims 1-9, 11, 12, 15-21, 23-33, and 35-47 are pending. Applicants submit that the pending claims are supported by the specification.

Support for the amounts of ingredients recited in the amended claims can be found in the specification as filed at least at pages 11-12, the Example (at pages 46-50), and the original claims.

For the reasons given below, Applicants submit that the amended claims are in condition for allowance and notification to that effect is earnestly solicited.

**Petition for Extension of Time**

It is noted that a two-month petition for extension of time is necessary to provide for the timeliness of the response. A request for such an extension is made extending the time for response from June 26, 2003 to August 26, 2003.

**Species Election Requirement**

Applicants acknowledge that the Examiner recognizes Applicants' election of all esters of sebacic acid and adipic acid.

**Suggestions Regarding Claim Language**

Applicants acknowledge and appreciate the Examiner's careful reading of the claims for apparent typographical errors.

Applicants believe that original dependent claims 5-7 properly limited the composition of claim 1 by specifying particular mono-or-diester dicarboxylates. Nonetheless, applicants have amended these claims as suggested by the Examiner. This amendment does not narrow the claims and is not made for reasons of patentability.

Amended claim 7 includes transitional language. The duplicate recitation in claim 18 has been deleted. The spelling of triethanolamine in claim 20 has been corrected. Claim 47 now

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recites "container". These amendments do not narrow these claims and are not made for reasons of patentability.

#### **Rejection of Claims Under § 102(b)**

The Examiner rejected claims 1-33, 35 and 42-46 under 35 U.S.C. § 102(b) as obvious over Carr et al. (WO 98/28267). Applicants respectfully traverse this rejection.

Each of the independent claims recites a composition including up to about 10 wt-% mono-or-diester dicarboxylate, up to about 10 wt-% hydrogen peroxide, and about 90 or more wt-% water. The claims also recite that the composition exhibits antimicrobial activity against *Bacillus cereus*, *Bacillus subtilis*, or *Chaetomium funicola* upon contacting the microbe with the composition for at least 5 seconds at 0 °C to 100 °C.

The Carr et al. reference fails to disclose or suggest these amounts of ingredients and/or the recited antimicrobial activity. Therefore, the Carr et al. reference cannot anticipate the presently claimed invention.

Accordingly, based on the foregoing differences, it is submitted that the reference cited in this prior art rejection neither teaches nor suggests the presently claimed methods and compositions, and withdrawal of this rejection is respectfully requested.

#### **Rejection of Claims Under § 103(a)**

The Examiner rejected claims 1-47 under 35 U.S.C. § 103(a) as obvious over Carr et al. (WO 98/28267) in view of Hei (U.S. Patent No. 6,024,986), Chemical Abstracts 134:97683 and Richter et al. (WO 00/30690). Applicants respectfully traverse this rejection.

Each of the independent claims recites a composition including up to about 10 wt-% mono-or-diester dicarboxylate, up to about 10 wt-% hydrogen peroxide, and about 90 or more wt-% water. The claims also recite that the composition exhibits antimicrobial activity against *Bacillus cereus*, *Bacillus subtilis*, or *Chaetomium funicola* upon contacting the microbe with the composition for at least 5 seconds at 0 °C to 100 °C.

The Example of the present patent application includes results obtained with the presently claimed compositions and methods (present application at pages 46-50). This example also includes comparative data for "Conventional Formulations", which are, in fact, compositions

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according to the disclosure of the Carr et al. reference. Table 1 at page 47 of the present application discloses that the compositions according to the Carr et al. reference exhibit little or no antimicrobial activity against *C. funicola* and/or *B. subtilis*.

Unexpectedly, the present compositions exhibit antimicrobial activity that is surprisingly large compared to the conventional formulations (Table 1, Compositions 11 and 12). The results reported at pages 48 and 49 of the present application show that a variety of the presently claimed compositions exhibit similar unexpected and surprising antimicrobial activity. Therefore, the present compositions and methods exhibit antimicrobial activity that is unexpected and surprising in light of the disclosure of the references cited in this rejection. As such, these references cannot be said to teach or suggest the presently claimed invention.

Further, applicants note that the present claims include ranges of ingredients tailored to reflect the compositions that provided these unexpected and surprising results.

Accordingly, based on the foregoing differences, it is submitted that the references cited in this prior art rejection neither teach nor suggest the presently claimed methods and compositions, and withdrawal of this rejection is respectfully requested.

### Summary

In summary, Applicants submit that each of claims 1-9, 11, 12, 15-21, 23-33, and 35-47 are in condition for allowance. The Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below, if the Examiner believes that doing so will expedite prosecution of this application.

Respectfully submitted,

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Date:

Aug 26, 2003

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